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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,455	08/08/2003	Jennifer A. Gaul	410058	3437
30955 7590 03/18/2008 LATHROP & GAGE LC 4845 PEARL EAST CIRCLE SUITE 300 BOULDER, CO 80301				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
03/18/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/637,455

**Applicant(s)**

GAUL ET AL.

**Examiner**

Lien T. Tran

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 March 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 5-9 and 11-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 5-9, 11-16 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

Claims 5-6,8-9,12,13-14, 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Murphy et al.

Murphy et al disclose a composition comprising wheat protein. The protein is present in amount of at least .1 parts per 100 parts of flour. When the protein is present in an aqueous dispersion that is added to a flour or batter formulation, the protein in the dispersion amount to .1-8 parts per 100 parts of flour. The composition is added to dough or batter to make reduce-fat or fat free baked goods such as doughnuts, cakes, cookies etc... The wheat protein can be wheat protein isolate. ( see col. 1 lines 45-62, col. 3 lines 32-36, col. 5 lines 15-26 and col. 7 lines 17-23)

Murphy discloses all the limitations of the claims. Murphy discloses on column 3 lines 32-37 that the protein used can be selected from non-fat milk solids, dried egg, wheat gluten etc.. Thus, it is inherent that the protein selected does not have to include milk solid. Thus, the disclosure includes embodiment that does not contain dried milk. The amount of wheat protein isolate in Murphy falls within the range claimed.

Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al.

Murphy et al do not specifically disclose cake donut.

Murphy et disclose donuts; thus, it would have been obvious to one skilled in the art to make cake donut because that is a conventional type of donut.

Claims 5-9, 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prosis in view of Murphy et al.

Prosise disclose a composition for making donut and a fried donut. The composition does not contain dried milk as shown in example 1. Prosise also discloses forming cake donut as shown in example 2.

Prosise does not disclose adding wheat protein isolate in the amount claimed.

Murphy et al teach to add a composition comprising hydrocolloid and protein to baked goods including donut to improved texture, mouthfeel, softness, moistness, moisture-retention, shelf-life, flavor enhancement, fatty attribute and volume. The composition takes away the inclusion of overtly added fat material such as shortening from the dough. The protein includes wheat protein isolate. ( col. 1 lines 45-55, col. 4 lines 50-60, col. 7 lines 17-21)

It would have been obvious to one skilled in the art to add the composition disclosed by Murphy et al to the Prosise composition to obtain the benefits disclosed by Murphy et al. Murphy et al disclose the food products in which the composition is used include donut; thus, its addition to the Prosise product is totally compatible and enhances the properties of the Prosise product. The addition of the composition takes away the need to add shortening in the Prosise composition which will decrease the overall fat content of the product. Prosise does not specifically disclose the absence or present of dried milk in the cake donut formulation. However, Prosise discloses on col. 1 lines 60-65 that a typical donut mix can contain nonfat dry milk. Thus, dried milk is an optional ingredient; it would have been obvious to one skilled in the art to omit or to add depending on the nutrition wanted. Prosise discloses the protein can be omitted as shown in example 1.

Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prosise in view of Green et al.

Prosise discloses a fried food product. The product is made from a dough which is formed into a donut and fried to form the fried food product. ( see example 1)

Prosise does not disclose adding wheat protein isolate in the amount claimed.

Greene et al teach to use flour with high protein content or to add proteinaceous substance such as wheat gluten to noodle dough which is subjected to frying. The addition of the protein lower the amounts of oil up-take. The amount of protein added is up to about 5% based upon the weight of the flour employed. ( see col. 5 lines 5-18)

It would have been obvious to add wheat protein in the amount taught by Greene et al to the Prosise composition to obtain the benefit taught by Green et al to reduce the fat content of the product. It would have been obvious to use wheat protein isolate when desiring a more concentrated and purer protein material. The addition of the protein taught by Green further enhances the objective of Prosise in forming a reduced fat product.

Applicant's comment with respect to the limitation of " omitting the dried milk" is addressed in the rejections above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

March 12, 2008

/Lien T Tran/

Primary Examiner, Art Unit 1794